

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of:)
 Opinion requested by)
 John Stephen Spellman)
 _____)

No. 75-026
 May 1, 1975

BY THE COMMISSION: We have been asked the following questions by John Stephen Spellman:

John Stephen Spellman is a "legislative official" within the meaning of Government Code Section 82038.^{1/}

(1) If he travels to San Luis Obispo County at State expense to tour the nuclear power plant of the Pacific Gas and Electric Company (PG&E) and is given a special tour which is not available to the public generally, but which has been arranged especially to provide information to state government through him (and which involves, hypothetically, the time of an engineer and a government relations employee of PG&E worth much more than \$10), is this a gift within the meaning of the Act? Assume, for purposes of answering, that the tour was arranged at his request and that it would not be provided for anyone other than a government official and that the value (cost to the Company) is much greater than \$10.

(2) If he is a friend of a registered lobbyist and he invites the lobbyist to his home for dinner, and the lobbyist provides nothing of value but the pleasure of his company, has a reportable "exchange" occurred?

^{1/}
 All statutory references are to the Government Code unless otherwise noted.

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CONCLUSION

(1) A tour of PG&E's nuclear power plant under the circumstances given is not a gift within the meaning of Section 82028.

(2) The entertainment of a lobbyist by an official is not reportable.

ANALYSIS

(1) Section 82028 defines the word "gift" to mean:

... any payment to the extent that consideration of equal or greater value is not received ...
The term "gift" does not include informational material such as books, reports, pamphlets, calendars or periodicals. No payment for travel or reimbursement for any expenses shall be deemed "informational material."

(Emphasis added.)

It may be assumed that the providing of the tour to Mr. Spellman is a "payment," since the definition of that term in Section 82044 includes the "rendering of ... services." We believe, however, that the tour is not a gift because it comes within the exception for "informational material."

It is true that Section 82028 contains no specific reference to intangible informational material, and the examples given in that section are tangible materials. However, it appears clear that the exception of informational material includes the tour here under consideration.

Travel is intangible in nature, and Section 82028 specifically provides that payment of another's travel expenses is a gift, because of the potential for abuse. This does not apply to the tour in question here. Mr. Spellman's travel expenses are paid by the State, and the tour that is provided by PG&E, although intangible in nature, supplies information in a useful form and does not lend itself to any accompanying gratuities or special favors. The exclusion for travel read with the rest of the section indicates a legislative intent to cover both tangible and intangible materials. If intangible services were not included within the phrase "informational material," there would be no reason to set

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forth a specific exclusion of travel expenses.

The acquisition of adequate information is essential to sound legislative and administrative action. It is not the purpose of the Political Reform Act to interfere in any way in the free flow of information to officials. Only financial pressures and inducements are sought to be limited and disclosed. See Section 81001(b). The tour outlined here would increase the knowledge of the legislative official and would be neither prohibited nor reportable as a gift under the Act.^{2/}

(2) There is no requirement for an official to report entertainment of a lobbyist.

The reporting requirements imposed on officials are those contained in Section 87207 relating to income. Gifts and other income over certain amounts received by some officials must be reported. However, gifts made by officials^{3/} are not reportable by the official.

Mr. Spellman asks if the entertainment must be reported by the lobbyist as an "exchange." Lobbyists must report exchanges with elective state officials, legislative officials and agency officials under Section 86107(d). Emergency regulations adopted by the Commission on January 21, 1975, further defined the word "exchanges" in Section 18604(e) as follows:

Reportable "exchanges" includes sales, purchases, loans, gifts and other transactions without regard to form

(Emphasis added.)

The comment to the regulation, however, makes it clear that the regulation contemplated gifts by lobbyists to officials, and not the reverse:

^{2/}

We intimate no views as to whether the expense of the tour to the Company is reportable by the Company as a payment to influence legislative and administrative action under Section 86109(c).

^{3/}

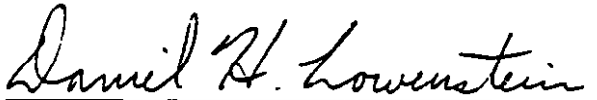
No income reporting obligations are imposed on Mr. Spellman at present, but he will be covered by a conflict of interest code beginning in 1976.

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Sections 86107(d) and (e) are intended to open to public view transactions between lobbyists and high-level public officials, to assure that favorable terms are not provided to such officials in anticipation of favorable governmental decisions.

The "exchange" language is intended as an adjunct to the regulation of gifts and is included to assure that no transaction resulting in a benefit to the official shall escape scrutiny. No purpose of the Act would be served by reporting a gift from an official to a lobbyist. The hospitality of Mr. Spellman is not a reportable "exchange" under the Act.

Approved by the Commission on May 1, 1975. Concurring: Brosnahan, Miller, Waters and Lowenstein. Commissioner Carpenter was absent.


Daniel H. Lowenstein
Chairman